

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF GENERAL COUNSEL**memorandum**

TO: Director, Reference Information Center
Chief, Wireless Telecommunications Bureau

FROM: *DMA* Daniel M. Armstrong
Associate General Counsel

SUBJECT: *Self Communications, Inc. v FCC*, No. 03-1181. Filing of a Petition for Writ of *Certiorari* in the United States Supreme Court.

DATE: March 3, 2004

This is to advise you that on February 19, 2004, Self Communications, Inc. filed a petition for *certiorari* to the United States Supreme Court from the judgment of the D.C. Circuit in *Sioux Valley Rural Television, Inc. v. FCC*, 349 F.3d 692 (D.C. Cir. 2003). Petitioner is the only party to the *Sioux Valley* case seeking further review.

Petitioner, which did not qualify as a small business under the Commission's rules governing the Interactive Video and Data Service ("IVDS") auction in 1994, challenges the Commission's decision to limit to only small businesses the Remedial Bidding Credit adopted in the *218-219 MHz Restructuring Orders*:

Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd. 1497 (1999)

First Reconsideration Order, 14 FCC Rcd. 21078 (1999);

Second Order on Reconsideration, FCC 00-411 (rel. Dec. 13, 2000);

Third Reconsideration Order, FCC 02-130 (rel. May 8, 2002).

In these orders, the Commission, *inter alia*, retroactively removed the bidding credit granted to women/minority owned businesses in the 1994 IVDS auction based on the subsequent holding of the Supreme Court in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995). The Commission simultaneously granted a "Remedial Bidding Credit" to all small businesses (including women/minority owned small businesses) that won licenses at the IVDS auction. The Commission rejected request by larger businesses for similar treatment. The D.C. Circuit upheld the Commission's decision, holding that the Commission could rationally distinguish between small businesses and larger businesses in expanding the bidding credits to encourage the participation of small businesses in auctions under Section 309(j).

The *cert.* petition asserts, as did the briefs to the D.C. Circuit below, that the grant of the Remedial Bidding Credit was an incomplete remedy for the discrimination that occurred in the 1994 auction, and that the underlying intent of granting the credits only to small businesses was to preserve the advantages given to women/minority owned-businesses at the 1994 IVDS auction.

The *cert* petition does not raise any asserted conflicts between the circuits or any potentially recurring matters of national importance. We have recommended to the Office of Solicitor General that we believe that this is a case where a waiver of our response is appropriate.

The Court has docketed this case as 03-1181. The attorneys assigned to handle the litigation of this case are Stewart A Block and Austin Schlick.